

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE SAINT PAUL CITY COUNCIL

In the Matter of All Licenses Held by
Abdishakur Abdi Hassan d/b/a Capitol
Tobaccos for the Premises Located at
152 University Avenue West in Saint Paul

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

This matter came on for hearing before Administrative Law Judge Eric L. Lipman on December 23, 2011, at the Ramsey County Courthouse in St. Paul, Minnesota. The hearing record closed at end of the evidentiary hearing

Kyle Lundgren, Assistant City Attorney, appeared on behalf of the Department of Safety and Inspections (the Department or DSI). Karen E. Marty, Marty Law Firm, appeared on behalf of the Licensee, Abdishakur Abdi Hassan, d/b/a Capitol Tobaccos (Licensee or Capitol Tobaccos).

STATEMENT OF ISSUES

1. Should regulatory action be taken against the licenses held by Capitol Tobaccos, because it failed to maintain the approved capacity for its establishment, in violation of sections 55.06 and 310.05 (m)(2) of the St. Paul Legislative Code?

As discussed more fully below, the Administrative Law Judge concludes that Capitol Tobaccos should be sanctioned for its failure to maintain the approved capacity for its establishment.

Based upon all the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Abdishakur Abdi Hassan, formerly known as Mohamud H. Ridhwani, holds a retail license to sell cigarettes and tobacco. His tobacco shop is located on University Avenue in Saint Paul, Minnesota.¹

¹ Exhibits 4-1 and 4-2; Testimony of Abdishakur Abdi Hassan.

2. The City of Saint Paul places properties into various “occupancy groups.” The primary occupancy group for Capitol Tobaccos is “Mercantile – Sales.”²

3. As a retail establishment, Capitol Tobaccos is permitted to have a maximum of 67 persons – including retail staff – on its premises at any one time.³

4. Capitol Tobaccos’ principal trade is selling shisha tobacco – a combination of fruit molasses and tobacco that is popular in the Middle East and Africa.⁴

5. As part of Capitol Tobaccos’ retail operation, customers may purchase loose-leaf tobacco, hookah pipes and other tobacco-related products. Capitol Tobaccos also permits its customers to sample the tobacco that those customers purchase, while still on its premises, using a hookah waterpipe that it provides. Shisha tobacco is commonly enjoyed by smokers who use a hookah waterpipe.⁵

The Events of October 15, 2011

6. Robert Fletcher is the Watch Commander of the Saint Police Department’s Western District.⁶

7. In the early morning hours of October 15, 2011, Commander Fletcher was in his squad car in the parking lot behind Capitol Tobaccos. Capitol Tobaccos – also known as “Capitol Hookah” – is located at 152 University Avenue West in Saint Paul.⁷

8. Noting a disturbance between young people in the parking lot, Commander Fletcher used his police radio to request the assistance of other police officers in the area.⁸

9. The parking lot behind Capitol Tobaccos has been the scene of a number of such disturbances in recent years.⁹

10. Nine squad cars from the Saint Paul Police Department responded to the Watch Commander’s radio call.¹⁰

² Ex. 3-1; Testimony of Christine Rozek.

³ Exs. 3-2 and 4-1; Test. of C. Rozek.

⁴ Test. of A.A. Hassan.

⁵ Testimony of Liban Ali; Test. of A.A. Hassan; Testimony of Ali Yusef; *see also*, Test. of C. Rozek; Testimony of Darin McDonald.

⁶ Test. of D. McDonald

⁷ *Id.*

⁸ Test. of D. McDonald; Test. of L. Ali; Testimony of Nathan D. Rutherford.

⁹ Testimony of Kurt Roettjer; Testimony of Michael Curtis; Test. of D. McDonald.

¹⁰ Test. of D. McDonald.

11. Officers Darin McDonald and Kurt Roettjer were among the officers who responded to the Watch Commander's call on October 15, 2011. Upon their arrival, these officers were directed by Commander Fletcher to oversee the closing of Capitol Tobaccos for the evening and the dispersal of the patrons inside the establishment.¹¹

12. Other officers began dispersing the cars and people in the parking lot behind Capitol Tobaccos.¹²

13. Officer McDonald estimated that at the time that he entered Capitol Tobaccos, there were approximately 200 people in the retail spaces of the premises. While Officer McDonald did not count the customers and staff in the building, he asserted that at the time of his arrival, patrons were standing shoulder to shoulder in each available bit of floor space. He asserted that when he arrived, there were many more than 67 people inside the premises.¹³

14. Officer Roettjer estimated that when he entered Capitol Tobaccos on October 15, 2011, there were between 100 to 150 people in the retail spaces of the premises. While Officer Roettjer did not count the customers and staff in the building, he asserted that at the time of his arrival, there were so many patrons inside the establishment that those persons could not move in the hallway or retail spaces of Capitol Tobaccos without genuine difficulty. He asserted that when he arrived, there were many more than 67 people inside the premises.¹⁴

15. Because of their duties with the Saint Paul Police Department, both Officers McDonald and Roettjer have experience in estimating crowds and safely dispersing crowded premises.¹⁵

16. At the evidentiary hearing, employees and agents of Capitol Tobaccos offered a very different version of events. In turn, Messrs. Ali, Curtis, Hassan, Rutherford and Yusaf testified that there were approximately twenty patrons and staff inside the premises in the early morning hours of October 15, 2011.¹⁶

Based upon these Findings, the Administrative Law Judge makes the following:

¹¹ Test. of D. McDonald; Test. of K. Roettjer.

¹² Test. of D. McDonald.

¹³ *Id*; *see also*, Ex. 1-3

¹⁴ Test. of K. Roettjer.

¹⁵ Test. of D. McDonald; Test. of K. Roettjer.

¹⁶ Test. of L. Ali; Testimony of Michael Curtis; Test. of A.A. Hassan; Test. of N. Rutherford; Test. of A. Yusef.

CONCLUSIONS OF LAW

1. The Administrative Law Judge and the St. Paul City Council have jurisdiction to hear this matter pursuant to Minn. Stat. § 14.55 and St. Paul Legislative Code §§ 310.05 and 310.06.
2. DSI gave proper notice of the hearing and has fulfilled all of the relevant substantive and procedural requirements of law and rule.
3. As the party proposing that certain action be taken, DSI has the burden of proving facts at issue by a preponderance of the evidence.
4. The testimony of Officers McDonald and Roettjer as to the events of October 15, 2011, and the number of persons inside the premises, was more credible than the versions offered by Messrs. Ali, Curtis, Hassan, Rutherford and Yusaf.
5. On October 15, 2011, Capitol Tobaccos failed to maintain the approved capacity for its establishment, in violation of sections 55.06 and 310.05 (m)(2) of the St. Paul Legislative Code.
6. Under Saint Paul Legislative Code §310.05 (m) (2), the presumptive penalty for a first violation of provisions of the legislative code relating to the licensed activity is a \$500 penalty.
7. As to this violation there are no substantial and compelling reasons in the record to justify a deviation from the application of the presumptive penalty.

Based upon these Conclusions, and for the reasons explained in the accompanying Memorandum, the Administrative Law Judge makes the following:

RECOMMENDATION

Based upon these Conclusions, the Administrative Law Judge respectfully recommends that:

The St. Paul City Council IMPOSE a \$500 penalty for the Licensee's failure to maintain the approved capacity of his establishment on October 15, 2011.

Dated: January 31, 2012.

s/Eric L. Lipman
ERIC L. LIPMAN
Administrative Law Judge

Reported: Digitally recorded.
No transcript prepared

NOTICE

The St. Paul City Council is requested to serve notice of its final decision upon each party and the Administrative Law Judge by first-class mail.

MEMORANDUM

The testimony in this case could not diverge more sharply. The police officers who arrived at the Licensee's premises on October 15 assert that there were more than 100 people jammed into the tiny tobacco shop on that night. By contrast, the Licensee and his employees and contractors, describe a very different scene – a birthday celebration consisting of approximately one dozen young women and six staff.

The Licensee asserts that the estimates offered by Officers McDonald and Roettjer should be discounted because those calculations were distorted by the anxiety involved in responding to a call from the Watch Commander and the limitations that Caucasian officers have in accurately counting Somalis.

The hearing record does not support either of these claims. If, as the Licensee maintains, Officers McDonald and Roettjer were met by a dozen Somali girls eating birthday cake, and Capitol Tobaccos staff, the Administrative Law Judge doubts that such a scene would place the officers into a state of heightened anxiety. Similarly, there is no evidence in the hearing record establishing bias on the part of either officer or that either man would have difficulty estimating the number of African-American customers.

The hearing record supports the City's contention that the Licensee failed to maintain the approved capacity for his establishment on October 15, 2011.

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